IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20/04/2004

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The Honourable Mr. Justice K.P.SIVASUBRAMANIAM

Writ Petition No.4154 of 1997

P. Pathima Mary .. Petitioner

-Vs-

1. Union of India,
rep. by the
Government of Pondicherry
through its Secretary,
Pondicherry.

2. The Labour Officer,
Government of Pondicherry,
Karaikal.

3. The Tahsildar,
Taluk Office,
Kariakal. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for the issue of a Writ of Certiorarified Mandamus as stated therein.

For petitioner: Mr. C.K. Chandrasekaran
for M/s Row and Reddy, and Vaigai.

For respondents: Mr. T. Murugesan
Government Pleader (Pondicherry)

:ORDER
The petitioner prays for a Certiorarified Mandamus to call for the records relating to the Order dated 12.12.1996 issued by the third respondent, to quash the same and to consequently direct the respondents to declare the petitioner as belonging to Scheduled Caste.

2. The petitioner contends that the Tahsildar of Karaikal had refused to issue a certificate in favour of the petitioner as belonging to Scheduled Caste inspite of disclosing the previous certificates to that effect. The petitioner is employed as an Assistant Employment Officer and the certificates issued by the Tahsildar, Kariakal as well as School records show that she belongs to Scheduled Caste Community. Her father's name is Panneerselvam and she was named as Fathiama Mary as her parents wanted to name

her after the shrine at Velanganni, which is worshipped by people belonging to all religions. As early as 15.3.1971, she also obtained Secondary School Leaving Certificate which shows that she belongs to Harijan Commun ity. On 22.6.1979, the Deputy Tahsildar, Karaikal had also issued a Certificate showing the petitioner as belonging to Scheduled Caste. The Deputy Tahsildar was the appropriate authority to issue the said Certificate at that point of time.

3. The petitioner further states that she was married to one Mr. Anthonisamy on 19.9.1982 at Kariakal. Though her husband is a Christian, she has not changed her religion to Christianity. She continues to be a Hindu. In 1995, she was required to submit a fresh Community Certificate by the Department in which she was employed. Therefore, she had applied to the Tahsildar, Karaikal on 7.2.1995 with all the requisite particulars of earliers Certificates. However, there was delay in issuing the Certificate inspite of reminders being sent. In the mean time, she obtained Community Certificate dated 10.10.1996 from the Tahsildar, Nannilam. However, the Tahsildar at Karaikal had issued a letter on 12.12.1996 declining to issue the Certificate on the ground that after enquiry it was found that the petitioner did not profess Hindu or Sikh religion and hence the above Writ Petition.

4. Learned counsel for the petitioner contends that there was absolutely no evidence to show that she has converted to Christianity. Though she has been given a Christian name, she continues to be a Hindu and her marriage did not take place in Church. The said fact has also been certified by a priest of St.Andrew's Church at Kurumbagaram and the petitioner contends that her marriage was only 'Seerthiruthu Thirumanam' by exchange of garlands in the presence of elders and other relatives. In fact, their two children have also not been baptized. Therefore, it was erroneous to state that the petitioner had ceased to be a Hindu.

5. Learned counsel further contends that the Certificate obtained by the petitioner in the year 1969 was issued by the competent authority and hence unless and otherwise the said certificate is cancelled in the manner known to law after due enquiry and in terms of the judgment of the Supreme Court in Kumari Madhuri Patil and another vs. Addl.Commissioner, Tribal Development and others [(1994)6 SCC 241], the old certificate validly issued will continue to operate and the same cannot be ignored by any authority. The requirement of certificates to be issued by Revenue Divisional Officer will be effective only from 11.11.1989 and hence the certificates issued earlier are binding on the authorities and have to accept the same.

6. I have also heard the learned Government Pleader for the respondents and the learned Government Pleader admits that there was no specific enquiry on the genuiness of the certificate already obtained by the petitioner.

7. I have considered the submissions of both sides. On the very admitted ground that there has been no enquiry regarding the Community to which the petitioner belongs to, the Certificate originally issued in favour of the petitioner shall continue to be valid unless it is cancelled after due

enquiry by a properly constituted Vigilance Committee in terms of the judgment of the Supreme Court in Kumari Madhuri Patil and another vs. Addl.Commissioner, Tribal Development and others (supra). On this ground alone, the petitioner is entitled to succeed.

8. On the issue as to whether the petitioner had converted to Christianity or not, there is no positive evidence on the side of the respondents to show that the petitioner had converted to Christianity. It is needless to emphasis that mere name cannot establish the religion to which a person belongs to. The names of great and historical literary, political and religious persons irrespective of the caste, creed or religion are adopted by people belonging to various beliefs, as a result of the respect which they command by their achievements and popularity. For instance, if a person names himself as "Milton", who was a great poet or as "Eienstein", a gre at scientist, the said person does not become a Christian. Therefore, the names alone cannot lead to the inference that they had converted to a different religion. If there is any positive information of conversion, there has to be a proper enquiry after notice.

9. That apart, the Supreme Court in a recent judgment in State of Kerala and antoher vs. Chandramohan (2004 AIR SCW 1064) has held that merely by the change of religion, a person will not cease to be a member of Scheduled Tribe. Therefore, without expressing any conclusive opinion on the issue as to whether change of religion will have any effect on the Community to which he originally belonged to, it is an issue which has to be examined in the light of that judgment. It is sufficient to point out that at this stage, while dealing with the case of the petitioner, unless and otherwise, the certificate which is now held by her is cancelled after due enquiry, it shall continue to be operative.

10. It is sufficient to point out that till the Certificate is cancelled, the earlier Certificate shall continue to operate and the employer of the petitioner shall not in any manner deny the rights of the petitioner on the strength of the said Certificate.

11. The Writ Petition is allowed subject to the above observation. No costs.

Index: yes
Internet: yes

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